

040714ES2.TXT

EMPLOYMENT SECURITY DEPARTMENT  
STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS  
of  
UNEMPLOYMENT INSURANCE RULES  
STAKEHOLDER MEETING

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Date and Location

040714ES2.TXT

July 14, 2004

Wednesday, 2:30 p.m.

Employment Security Department  
Maple Leaf Conference RM  
212 Maple Park, 2nd Floor  
Olympia, Washington 98506

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BE IT REMEMBERED, that an Unemployment Insurance Rules stakeholder meeting was held at the location and time as set forth above. The Employment Security Department was represented by LARRY OLIN, Acting Rules Coordinator;

JUANITA

MYERS, Rules Coordinator; and SUSAN HARRIS was also present.

Reported by:

Marcie L. Johnson, CCR  
(License #2744)

EXCEL COURT REPORTING  
16022-17th Avenue Court East  
Tacoma, WA 98445-3310  
(253) 536-5824

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# PROCEEDINGS

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MR. OLIVE: Thanks for coming again this afternoon. I would like to call this hearing to order and, again, pursuant to the authority given us under RCW 50.012.010 and RCW 50.012.040, Chapter 42.30 RCW, which is the Open Public

6 Meetings Act and Chapter 34.05 RCW, the Administrative  
7 Procedures Act.

8 This hearing is hereby convened at 2:35, July 14, 2002,  
9 Maple Leaf Conference Room, Second Floor Employment Security  
10 Department, 212 Maple Park, Olympia, Washington.

11 And this hearing is convened to consider testimony  
12 considering only the following rule-making proposal; and  
13 that is the unemployment insurance rules related to an  
14 individual's eligibility requirements for benefits, job  
15 search requirements, job search monitoring provisions,  
16 penalties, overpayments, and the calculation of maximum  
17 benefits payable.

18 Notice of this hearing was published in the Washington  
19 State Register on May 19, 2004, as No. WSR 04-10-113. The  
20 Preproposal Statement of Inquiry was filed as WSR 03-14-140.  
21 It was sent to interested parties on June 17, 2004.

22 Again, my name is Larry Oline. I am the rules

23 coordinator for the State of Washington Employment Security  
24 Department. I represent Commissioner Sylvia P. Mundy as the  
25 hearing officer presiding at this public rule-making

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1 hearing.

2 And the department staff is here, if you want to  
3 introduce yourselves again. There's only a couple new  
4 players here from the last hearing.

5 MS. HARRIS: I'm Susan Harris with UI policy  
6 unemployment insurance division.

7 MS. MYERS: I'm Juanita Myers. I'm the rules  
8 coordinator for the unemployment insurance division.

9 MR. FAJARDO: Arnold Fajardo with the contracts office.

10 MR. OLINE: And do you want to introduce yourselves  
11 again, or just the new people since last time?

12 I guess for recording we should probably go around the  
13 room again.

14 MS. BRACKENBURY: I'm Amy Brackenburg with the Building  
15 Industries Association of Washington.

16 MR. TUVEY: I'm Dale Tuvey with United Claims  
17 Management.

18 MR. RAFFAELL: Norm Raffaeli with Weyerhaeuser Company.

19 MR. MCBRIDE: Tom McBride with the Association of  
20 Washington Business.

21 MS. GEE: Jan Gee with the Washington Retail  
22 Association and Washington Food Industry.

23 MR. GONZALEZ: Ray Gonzalez with the Boeing Company.

24 MR. SEXTON: Dan Sexton with the Washington State  
25 Building and Construction Trades Council; the Washington

1 State Association of Plumbers Pipe Fitters and Sprinkler  
2 Fitters.

3 MS. LOGUE: Carolyn Logue with the National Federation  
4 of Independent Business.

5 MR. JOHNSON: I'm Jeff Johnson with the Washington  
6 State Labor Council, AFL-CIO.

7 MR. OLINE: Okay. If you have not already done so -- I  
8 think everybody has signed in; is that correct?

9 Okay, then. Please sign in on the attendance log, and  
10 be sure that you provide all information in the blank. Only  
11 those persons that have noted on here that they wish to  
12 provide testimony will have an opportunity to do so.

13 This hearing is convened to consider written and oral



14 testimony presented on the proposal. It will consist of two  
15 parts again, which is a brief technical presentation, again  
16 by Juanita Myers, and oral testimony.

17 Before the agency files the final rule with the code  
18 reviser, a concise explanatory statement of the agency's  
19 reasons for adopting the rule, including a summary in  
20 response to all comments received, will be sent to the  
21 commissioner and placed in the permanent rule-making file.  
22 Copies will be available upon request.

23 Also please be advised that this hearing is being  
24 recorded and will become a part of the official rule-making  
25 file.

2 I like to ask Juani ta Myers to present and explain the  
3 proposal .

4 MS. MYERS: Thank you.

5 The department is adopting regulations to implement 2nd  
6 Engrossed Senate Bill 6097 passed by the Legislature last  
7 year. This bill contained substantive changes to the  
8 unemployment insurance program, including changes to the way  
9 in which benefits are calculated, eligibility requirements,  
10 and the job search monitoring program.

11 And I will do a brief summary of the regulations.  
12 WACs 192-04-040 through WAC 192-16-016, which is pages 1  
13 through 3 of the rules, contain housekeeping changes only.  
14 The amendments make the rules consistent with the revised  
15 statutes.

16 Beginning on page 3 at the bottom, WACs 192-100-100 --  
17 excuse me, -010, 020, 030, and 035 define the terms

18 "reasonably prudent person," "continued claim," "week," and  
19 "effective date of claim." These definitions are not new  
20 and reflect long-standing departmental policy. They are  
21 incorporated into rule for clarification purposes.

22 On the bottom of page 4, the new law provides that the  
23 maximum weeks payable on a claim is reduced from 30 to 26  
24 weeks when the unemployment rate is 6.8 percent or below.  
25 WAC 192-110-200 clarifies that the rate used in making this

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1 calculation is the three-month seasonally adjusted total  
2 unemployment rate and that the reduction to 26 weeks will be  
3 permanent.

4 Page 5, the new law also imposes different eligibility  
5 requirements based on the effective date of an individual's

6 unemployment claim. WAC 192-110-210 clarifies that, in the  
7 event a claimant canceled his or her claim, any eligibility  
8 decisions written on that claim will be void and new  
9 decisions will be written based on the claimants new claim  
10 effective date.

11 WACs 192-120-050 through WAC 192-150-050, that's pages  
12 5 through 11, are additional housekeeping changes.

13 Beginning on page 11, WAC 192-150-055 and WAC  
14 192-150-060 require that, to be eligible for unemployment  
15 benefits, an individual who leaves work because of illness  
16 or disability must terminate his or her employment and not  
17 be entitled to reinstatement in the same or similar  
18 position. This is consistent with RCW 50.20.050(2)(b) as  
19 amended, and reverses prior departmental policy that an  
20 individual could receive benefits while on a leave of  
21 absence as long as certain requirements were met.

22           WAC 192-150-065 through WAC 192-150-090 on page 13 are  
23 additional housekeeping changes.

24           Beginning on page 14, as amended, the voluntary quit  
25 statute, RCW 50.20.050, lists specific reasons the

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1 department can find that an individual has quit work with  
2 good cause.

3           WAC 192-150-110 clarifies good cause as it pertains to  
4 individuals who leave work to accompany a spouse who is  
5 transferred by the military.

6           WAC 192-150-115 clarifies the factors that will be  
7 considered in determining whether an individual's  
8 compensation has been involuntarily reduced by 25 percent or  
9 more.

10           WAC 192-150-120 clarifies the factors that will be  
11 considered in determining whether an individual's hours have  
12 been involuntarily reduced by 25% or more.

13           WAC 192-150-125 clarifies policy and defines terms  
14 regarding whether a change in worksite makes the time,  
15 distance, or difficulty of the commute greater than  
16 customary.

17           WAC 192-150-130 clarifies policy and defines terms  
18 concerning the safety of the worksite and whether an  
19 individual has taken steps to preserve his or her employment  
20 as required by statute.

21           WAC 192-150-135 further clarifies policy and terms  
22 related to illegal activities at the worksite and the steps  
23 an individual is required to take under the statute.

24           WAC 192-150-140, at the top of page 17, establishes the  
25 department's policy concerning changes to an individual's

1 usual work that violate his or her religion or sincere moral  
2 beliefs. The rule includes factors the department will  
3 consider in determining whether good cause under this  
4 section can be established.

5       At the bottom half of page 17, Although the voluntary  
6 quit statute lists specific reasons that an individual has  
7 good cause to quit work, the US Department of Labor, DOL,  
8 notified the department that, under federal law, the  
9 department may not deny benefits to an individual who has  
10 refused an offer of new work that is unsuitable. DOL  
11 defines the term "new work" to include work offered by an  
12 individual's current employer that has different duties or  
13 imposes different terms of employment.

14           WAC 192-150-150 is adopted o conform to federal law and  
15 outlines the conditions under which as job separation will  
16 be treated as a refusal of new work rather than a voluntary  
17 quit. A definition of "new work" is adopted that is  
18 consistent with federal law.

19           I would like to make a note here. The department is  
20 proposing a minor change to subsection (5) of this rule.  
21 Consistent with state law, an individual may refuse an offer  
22 of unsuitable work, but may not change his or her mind and  
23 quit after accepting the job. Language will be added to  
24 this subsection to clarify that when the new work is from an  
25 individual's current employer, an individual may continue



1 working through an employer-provided grievance or  
2 arbitration period without the department considering they  
3 have accepted the new work. This is consistent with state  
4 law which requires that an individual take reasonable steps  
5 to preserve his or her employment.

6 WAC 192-150-200 discusses general provisions related to  
7 work-connected misconduct. It clarifies that, to be  
8 considered misconduct, the individual's action or behavior  
9 must result in harm or create the potential for harm,  
10 tangible or intangible, to the employer's interests.

11 WAC 192-150-205 defines terms related to misconduct,  
12 including willful, wanton, flagrant, and negligence.

13 WAC 192-150-210 clarifies provisions on tardiness,  
14 absenteeism, dishonesty, and violation of company rules as  
15 they relate to willful or wanton behavior that constitutes  
16 misconduct.

17 WAC 192-150-215 discusses the employer's responsibility

18 for providing the department with information regarding a  
19 claimant's discharge for a felony, gross misdemeanor, or  
20 gross misconduct. WAC 192-150-220 defines terms related to  
21 discharges for a felony or gross misdemeanor. These changes  
22 are not substantive to a prior rule.

23 WAC 192-180-010 through 192-180-030 are amended to  
24 incorporate changes to the job search monitoring program  
25 imposed by the new legislation.

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1 WAC 192-180-010 outlines the job search requirements  
2 for claimants, and clarifies the definition of the terms  
3 "job search contact," "in-person job search activity," and  
4 "directive."

5           WAC 192-180-015 is updated to clarify that individuals  
6 allowed benefits because they left work due to domestic  
7 violence or stalking are not subject to the job search  
8 monitoring program.

9           WAC 192-180-020 contains housekeeping changes only.

10          WAC 192-180-025 is amended to clarify the job search  
11 monitoring process, including the number of weeks subject to  
12 review, and the consequences to an individual who fails to  
13 report for the review when directed. In addition, to reduce  
14 identity theft, the department now requires an individual to  
15 present photo or other acceptable identification at the job  
16 search review. This rule clarifies the types of documents  
17 that are acceptable.

18          WAC 192-180-030 is amended to define the penalty for an  
19 individual who fails to attend a job search review that has  
20 been scheduled to review all weeks claimed.

21          WACs 192-180-040, 192-200-005, 192-200-010,

22 192-200-030, and 192-220-010, pages 25 through 27, contain  
23 housekeeping changes only.

24 WACs 192-220-020, 192-220-030, and 192-230-100, pages  
25 27 through 31, are updated to clarify that, as provided

11

1 under the new legislation, the department may not allow  
2 waiver or accept an offer in compromise on an overpayment  
3 that results from an individual being discharged from work  
4 due to misconduct. Any other changes in these regulations  
5 are housekeeping changes only.

6 Finally, WAC 192-240-035 and 192-240-040, page 31,  
7 contain housekeeping changes only.

8 The department has determined that changes to other

9 rules or statutes would not achieve the same regulatory  
10 objective.

11 The language of the proposed rules has been shared with  
12 the US Department of Labor. No other state agencies deal  
13 with the subject matter of this rule.

14 The department has chosen a reasonable, cost-effective  
15 manner of achieving the regulatory objective of the rule.

16 There are no anticipated environmental consequences  
17 associated with this rule.

18 There are no anticipated fiscal consequences associated  
19 with this rule.

20 Specifying performance standards is not appropriate for  
21 these rules.

22 The proposed regulations do not impose more than minor  
23 costs on businesses in general or small business in  
24 particular. Any costs to employers result from the  
25 legislation establishing the changes to the unemployment

1 compensation program rather than from these regulations.

2 Five meetings with stakeholders were held during the  
3 period August 2003 through January 2004. Additional  
4 opportunities to provide written input were also given to  
5 stakeholders. All input has been considered during the  
6 formulation of these regulations.

7 And I would like to thank everybody here. I think  
8 you've pretty much all attended one or more of the  
9 stakeholders meetings and your participation has been very  
10 much appreciated. Because for some of this we were -- it  
11 represented such significant changes to the law, we were  
12 writing in a vacuum or would have if we hadn't had your

13 participation. So I do thank you.

14 (Brief recess requested on  
15 the part of the reporter.)

16 MR. OLINE: Again, thanks, Juanita, for the brief  
17 technical presentation.

18 We will now hear testimony from those of you who logged  
19 in the attendance log concerning the proposal. And let's  
20 start out first with Dan Sexton.

21 MR. SEXTON: Oh, gosh, that's what you get for signing  
22 in first, huh?

23 Well, let me see. There's much I like here and much I  
24 don't like. You know, could you get back to me? I have to  
25 find the sections that I'm interested in. Is that all

1 right?

2 MS. MYERS: Yes.

3 MR. OLIVE: All right. Let's see. Who else? Ray  
4 Gonzalez from Boeing Company.

5 MR. GONZALEZ: All right. I would like to restate the  
6 comments that were submitted to the department on April the  
7 28th by e-mail to Juanita Meyers. And beginning with page  
8 7, WAC 192-130-080(5), for clarification and consistency we  
9 suggest that the word "may" following WAC 192-130-060 -- the  
10 word "may" be stricken and the word "will" be added in place  
11 of that word.

12 The next addition on that page under WAC 192-140-070,  
13 the third line, the word "and" following the statement, "or  
14 do not report whether you were able to work or were  
15 available for work," the following "and" should be stricken  
16 and replaced by the word "or."



17 Under the same section (2), the third line beginning  
18 where it says, "weeks claimed, and..." "and" should be  
19 stricken and replaced with "or you do not provide  
20 information..."

21 Under WAC 192-140-075(1), the line 3 beginning with,  
22 "...report whether you made an active search for work  
23 and..." the word "and" be stricken and replaced by the word  
24 "or." "Subsequently fail to report complete job search  
25 details..." the word "and" stricken; the word "or" replaced,

14

1 "...other information when requested."

2 Under WAC 192-040-080, third line, "...do not report a  
3 job search that meets the requirements outlined in the  
4 directive, and..." the word "and" stricken; the word "or"

5 replaced, "...you do not provide additional job search  
6 information."

7 The following page under WAC 192-140-090 under  
8 Justifiable Cause (a), "Your illness or disability or that  
9 of a member of your immediate family," add "prevent you from  
10 participating."

11 Page 11 under WAC 192-150-050 at (6) "that wages,  
12 hours, and other working conditions, would be considered  
13 suitable employment under RCW 50.020.100 and RCW 50.20.110."  
14 And (7) "...your statements are convincing that the work was  
15 accepted with no intention to avoid a potential  
16 disqualification."

17 Next page, WAC 192-150-060 (3) last line, "...request  
18 alternative work from your employer to be found available  
19 for work," add "unless a request for alternative work would  
20 be a futile act."

21 MR. RAFFAELL: I'm sorry, Ray. Would you repeat that  
22 reference again?

23 MR. GONZALEZ: Okay. I will start that over again.  
24 192-15-060, Notice to employer, RCW 50.20.050(3) beginning  
25 with the last sentence of (3), "You are" strike "not" -- I'm

15

1 sorry. I missed that before. Strike the word "not." "You  
2 are required to request alternative work from your employer  
3 to be found available for work," add "unless a request for  
4 alternative work would be a futile act."

5 This is consistent with the intent that the claimant  
6 must take all reasonable steps to preserve the employment.

7 Next is WAC 192-150-150, When is a separation  
8 considered a refusal of new work? Page 17 -- I'm sorry. I

9 skipped one above that.

10 WAC 192-150-140, Change in usual work that violates  
11 religion. This is simply a correction. Strike "religion"  
12 and replace "religious" or sincere moral beliefs.

13 Then WAC 192-150-150(4), "If the reduction in your pay  
14 or hours is ten..." strike "ten" add "less than 25 percent"  
15 -- excuse me "less than 25" strike "or less."

16 Following RCW 50.20.050(2) under (4), strike, "You can  
17 overcome this presumption by providing additional  
18 information to the department to support a finding that the  
19 job was not suitable as provided in RCW 50.20.110."

20 (5)(d) last line.

21 MS. GEE: 6.

22 MR. GONZALEZ: I'm sorry (6) under "'Substantially less  
23 favorable' means the work is materially reduced below the  
24 standard under which the greatest number of individuals in

25 your occupation and labor market area customarily work,"

16

1 strike "or the work would have a significantly unfavorable  
2 impact on you."

3 Page 23, WAC 192-220-020, Overpayments - Fault  
4 Provision (2) add (f), "The department erroneously removed a  
5 payment stop, resulting in improper payment"; (g) "You  
6 received a retroactive pension which was backdated by the  
7 pension source, even though not at your request."

8 MS. GEE: Where are you at? Are you at --

9 MR. OLINE: You lost us. Go back.

10 MR. GONZALEZ: WAC 192-220-020, Overpayments - Fault  
11 Provisions.

12 MR. SEXTON: Is this page 24?

13 MS. LOGUE: Page 28 actually.

14 MR. GONZALEZ: Is it page 28?

15 MS. LOGUE: Yeah.

16 MR. GONZALEZ: Sorry.

17 MS LOGUE: It's page 28 on the actual rule document.

18 MR. GONZALEZ: Okay. I'm sorry.

19 MR. OLINE: Now, which section?

20 MR. GONZALEZ: Okay, let's see. Under (f), add, "The  
21 department erroneously removed a payment stop, resulting in  
22 improper payment." Under (g) add, "You received a  
23 retroactive pension which was backdated by the pension  
24 source, even though not at your request."

25 MR. TUVEY: Are those additions to (2)?

1           MR. GONZALEZ: Yeah, these are additions. And that  
2 would change the other one. And under (f) currently it's --  
3 "other circumstances," and that would continue with (h).  
4 And then that would be (h) -- (f) would be changed to (h).

5           MS. GEE: That was in the prior written comments from  
6 AWB.

7           MR. GONZALEZ: Yes, correct.

8           Under the same WAC 192-220-020(4)(a), strike: "The  
9 department erroneously removed a payment stop, resulting in  
10 improper payment"; strike (b), "You received a retroactive  
11 pension which was backdated by the pension source, not at  
12 your request"; (c), strike (c) add (a).

13          MS. GEE: It's just renumbering.

14          MR. GONZALEZ: It's all renumbering.

15          Page 30, section WAC 192-230-100, Recovery of Benefit  
16 Overpayment - By repayment or offset against past or future

17 benefits. (5) beginning with sentence -- that would be the  
18 second sentence, "An offer in compromise will not be  
19 approved if the overpayment was caused by a denial under  
20 RCW 50.20.060," add "RCW 50.20.066"; strike: "Unless there  
21 are unusual circumstances which would justify a compromise.  
22 An offer in compromise will not be approved if the  
23 overpayment was caused by a denial under RCW 50.20.066."

24 That's all I have.

25 MR. OLIVE: Okay. Norm Raffaelli.

18

1 MR. RAFFAELLI: I would like to refer you to page 18,  
2 the second paragraph up from the bottom, which is (d). And  
3 it refers to some, what I consider, ambiguous terminology in



4 the way they are using "the greatest number of individuals  
5 in your occupation," and that would be 100 percent. You  
6 would have to be offered a job that would be lower than the  
7 lowest in that occupation. That's the greatest number. And  
8 I don't think that's what you mean. I suggest you come up  
9 with some other wording to identify this. Is it 70 percent?

10 If you're offering a person a job at 50 percent of what  
11 is there, what that means is that 50 percent of the people  
12 are working at that rate. And I don't think necessarily  
13 that makes the work unsuitable. And maybe it should be 70  
14 percent. If the rate's lower than 70, what's the rate you  
15 want to use? Certainly half the people working in a rate  
16 class that should be an acceptable wage. If you compare it  
17 with what they're making before, and they're making  
18 substantially more than that, that's another matter.

19 But when you're using the term "greatest number of  
20 individuals," that's 100 hundred percent. You would have to

21 be making -- at least the way I'm interpreting that -- less  
22 than the lowest person in order to make that good cause. So  
23 I think you need to probably redefine that section.

24 MR. SEXTON: Can I ask where you're at, Norm?

25 MR. RAFFAELL: On page 18, the second paragraph up is

19

1 defined as (d).

2 MR. SEXTON: Oh, (d).

3 MR. RAFFAELL: It's under (6), but it's the second  
4 paragraph up.

5 MR. SEXTON: Oh, I see.

6 MR. RAFFAELL: That's all I've got, other than I think  
7 we've submitted some changes on the letter by AWB. I think,

8 Ray, you may have.

9 MR. GONZALEZ: I think those are the ones that I  
10 included.

11 MR. RAFFAELL: And we still think those were good  
12 changes as well.

13 And as before, I would like to thank you both for  
14 working so hard on this for such a long period of time.  
15 Thank you.

16 MR. OLIVE: Next, Dale Tuvey from United Claims  
17 Management.

18 MR. TUVEY: First of all, I will also echo both sets of  
19 Norm's comments about the great work that you folks have  
20 done on these. You've worked long and hard on them and have  
21 come up with a good product.

22 I would also like to associate myself with and  
23 incorporate comments that Ray Gonzalez made with regard to  
24 the changes that were suggested by he here today orally and

25 by the comments from the Association of Washington Business

20

1 that were submitted in writing.

2 I do have a few additional thoughts and suggestions on  
3 these. And forgive me if I repeat any of them, because many  
4 of the ones that Ray mentioned I also have. I will try not  
5 to repeat, but if I do, forgive me.

6 On page 7 under WAC 192-130-080, I'm not sure if Ray  
7 mentioned there are two issues in that, one at paragraph 2  
8 where it says the department "may," and the suggestion was  
9 to change it to "will." And there's also one down in (5)  
10 where it says this "may be considered a request for relief,"  
11 and it should be "will."

12       There's another one, similar thing over on the next  
13 page, WAC 192-140-080. Again, I'm not sure if Ray covered  
14 this, but in the second line there it says, "...meets the  
15 requirements outlined in the directive..." and there's an  
16 "and," and it should be replaced by an "or."

17       The next page it's under WAC 192-140-090(4). It talks  
18 about "justifiable cause for failure to participate in  
19 reemployment services." Under (a) it says, "Your illness or  
20 disability..." -- "Justifiable cause includes, but is not  
21 limited to: (a) Your illness or disability or that of a  
22 member of your immediate family." And I think there should  
23 be an addition there that says, "that requires your personal  
24 presence." So just because the member of the immediate  
25 family is sick doesn't mean the person should get an

1 immediate pass, but it should be something that requires the  
2 claimant's personal presence.

3 I'm going to skip the pages, because there's so many  
4 versions of these things floating around that it's hard to  
5 keep track of it.

6 Under WAC 192-150-055, it says, Leaving work because of  
7 illness or disability. Under, let's see, the definitions'  
8 section towards the very end, Definitions (b), "immediate  
9 family," it says, "your spouse, children," and it says  
10 "other relatives" -- this is last line in that paragraph --  
11 "other relatives who temporarily or permanently reside in  
12 your household."

13 My suggestion would be to strike the words "temporarily  
14 or" so that it makes it a necessity for the person, the  
15 immediate family be somebody that permanently resides in the

16 household, not somebody that temporarily moves in or someone  
17 that may be potentially for some unrelated purpose or for a  
18 purpose related to that.

19 Let's see. Oh, the next one is over in WAC  
20 192-150-110. It says, "Mandatory Military Transfers." (2)  
21 -- well, there is a (2)(a). I would suggest adding a (b)  
22 and then renumbering (b) as (c). The addition to be as  
23 paragraph or as (b) that you reside with your spouse at his  
24 or her new duty station.

25 It often occurs that the person -- the military spouse

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1 moves, and the spouse or the military person moves, and the  
2 spouse moves someplace else besides where the husband went.  
3 And the idea of this is to keep the family together. And if

4 they're not going to be together anyway, they might as well  
5 not be together in Washington, or wherever they are, as  
6 opposed to moving someplace else. So if they are residing  
7 with their spouse, I have no problem with them being  
8 eligible. But if they're not residing with their spouse, I  
9 think they should be disqualified as not good cause to quit.

10 Under WAC 192-150-130, replace Worksite Safety.  
11 Paragraph 1 there it says, "At the time of hire, you can  
12 reasonably expect that your worksite complies with  
13 applicable federal and state health and safety regulations  
14 if after beginning work or accepting the job offer you  
15 become aware of a safety issue..." I think there should be  
16 something more than a simple declaration by the claimant  
17 that they became aware of some alleged safety violation.  
18 There may not be anything unsafe there. It may simply have  
19 been an unsubstantiated or unrealistic awareness on the part



20 of the claimant. There should be something more than their  
21 belief or allegation that there is something unsafe there.  
22 There should be something dependent, you know, action by a  
23 state agency or something like that that verifies that, in  
24 fact, there was some safety issue present.  
25 And somewhat similarly down in the next paragraph or

23

1 next section, WAC 192-150-135, it says, "To establish good  
2 cause for quitting work under this section you must notify  
3 your employer of the illegal activity." Well, who decides  
4 that it's illegal? The claimant may make allegations about  
5 something being illegal that, in fact, is not illegal. And  
6 they're not, in any case, qualified to or competent to  
7 decide what, in fact, is illegal. Just to give a blanket

8 authority to say that the claimant has the ability to say  
9 this is illegal, I think there needs to be something more  
10 than that.

11 Under WAC 192-150-140, Change in usual work that  
12 violates a religion, or as Ray suggested, religious or  
13 sincere moral beliefs, I think there should be some kind of  
14 definition as to what constitutes a sincere moral belief.  
15 And there certainly should be some history of the person  
16 having that belief or acting on that belief or in some way  
17 establishing that it's more than just a transient -- you  
18 know, "I don't like this, so it's my moral belief that it's  
19 wrong." There's no definition or no criteria there  
20 whatsoever.

21 The next one is under section 192-150-205, part 2 or  
22 (2). It says, "'Wanton' means malicious behavior showing  
23 extreme indifference..." I think the concept of "malicious"

24 and "i n d i f f e r e n c e" are at odds. "M a l i c i o u s" i m p l i e s i n t e n t  
25 and knowing and acting with foresight and with a purpose.

24

1 And "i n d i f f e r e n c e" simply means you don't care. That's not  
2 purposeful or not intentional not, whatever. It's just, I  
3 don't care. I think those two are just incompatible in the  
4 same definition.

5 And I think also in that section the word "extreme"  
6 ought to be deleted. It's showing indifference to risk,  
7 harm to another rather than "extreme indifference."

8 Under WAC 192-150-210(5), last part of that requires  
9 "...the rule is conveyed or posted in a language that can be  
10 understood by you." I think that the rule ought to be  
11 conveyed or posted in English, and it ought to be the

12 employee's responsibility to understand what the rules and  
13 responsibilities are. It ought not to be the employer's  
14 responsibility to have it published or translated into every  
15 or any known language or unknown language that a person may  
16 either speak or allege that they speak. If they're working  
17 in the United States of America, they ought to be able to  
18 understand their instructions or be responsible for  
19 understanding their instructions in English. Anyway, that's  
20 that.

21       192-150-220, I continue to think that it's interesting  
22 that the department does not consider their own employees to  
23 be competent authorities. I think they should be considered  
24 competent authorities.

25       Under WAC 192-200-005 paragraph or (3)(b), it's talking

1 about disqualification of students. The phrase that begins  
2 there is, "when you apply," and I'm not sure what that  
3 application is, what the person's applying for. If it's  
4 talking about when they apply for benefits, unemployment  
5 benefits -- if the only time that the disqualification  
6 doesn't apply is when they apply for benefits, and they  
7 demonstrate by a preponderance of the evidence their student  
8 status doesn't significantly interfere with their actual  
9 availability for work, that doesn't make sense, because the  
10 student's situation may come up after the start of their  
11 claim. They may not be a student at the time their claim  
12 begins, but they may enter student status later. Maybe it  
13 means when you apply to school. I'm just not sure. It  
14 should be at any time that they are in school and are  
15 attending class that they need to -- if they are going to be

16 not disqualified, they need to demonstrate by a  
17 preponderance of the evidence that their status doesn't  
18 interfere with their ability to work. It makes no sense to  
19 limit that.

20 Under WAC 192-200-030, Unemployment benefits while in  
21 training, it says, "If your enrollment drops below full time  
22 or you are not making satisfactory progress, you may be  
23 required," it should be changed to "...you will be required  
24 to show that you are meeting the availability for work and  
25 job search requirements." If you're not making satisfactory

26

1 progress, you ought to be out looking for work and should be  
2 required to prove that you're doing so.

3 Ray made some suggestions to changes in WAC  
4 192-220-020. And I'm not sure how this will fit in with  
5 those. But just a comment that I think that there should be  
6 some language that indicates that if the claimant has gotten  
7 a determination denying benefits, they should be presumed to  
8 know that they are receiving benefits. Then, subsequent to  
9 that, if they receive benefits, they should be presumed to  
10 know that they are receiving them in error if, in fact, they  
11 have been given written instruction or notice that they are  
12 not entitled to the benefits.

13 Over in WAC 192-220-030 Overpayments, paragraph 3:  
14 "You will be required to provide financial information to  
15 the department to determine if the overpayments will be  
16 waived. Your failure to provide such information within 10  
17 days from the request date will result in the department  
18 making a decision, based on available information, regarding  
19 your eligibility for waiver."

20 I think that if they fail to provide information with  
21 which the department can make a decision, that they should  
22 be automatically denied the waiver of the collection of the  
23 overpayment. If they don't provide the information, then  
24 they're not entitled to a waiver.

25 Here, again, this is one that Ray commented on. I'm

27

1 not sure that he covered it or not so I will.

2 WAC 192-230-100 on the Recovery of benefit  
3 overpayments, under paragraph 5 it says, "An offer and  
4 compromise will not be approved if the overpayment was  
5 caused by a denial under RCW 50.20.065 or 50.20.070." I  
6 think 070 should be stricken. There should be no waiver of



7    compromise for somebody that receives benefits fraudulently.  
8    By having imposed the fraud disqualification, you're  
9    indicating that they knowingly did something that resulted  
10   in them getting payment that they shouldn't have, and there  
11   should be no waiver of compromise for people who  
12   fraudulently obtain benefits. I think that that's just  
13   outrageous that that would even be considered.

14        I have got the ones on job search 192-108 on a separate  
15   sheet, and I skipped by those, so I will go back to them.  
16   There's not too much.

17        Under WAC 192-180-025 -- I'm looking at paragraph  
18   (3)(b) -- it says, "If you can demonstrate good cause for  
19   not attending the initial JSR interview, you will be  
20   rescheduled for a review of one week." I think there should  
21   be added in there "at least one week" to give the department  
22   flexibility to examine more than one week if necessary.

23        That's consistent, I think, with the changes that were

24 made in the original JSR interview where it indicates that  
25 they are going to look at at least one week. And this just

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1 does the same thing when they have demonstrated good cause  
2 and are rescheduled for a subsequent interview.

3 Under WAC 192-180-030, Penalties, if you don't look for  
4 work or fail to report, paragraph 3 says, "...such failure  
5 will be treated as nondisclosure under RCW 50.20.160(3) and  
6 your benefits may be denied." I think it should be "will be  
7 denied." It says, "for any weeks at issue," and I think  
8 there should be the addition of "and until you comply with  
9 the requirements," until they produce the job search log and  
10 show that they are in fact looking for work.

11 And I think that's all the comments that I have. Thank  
12 you.

13 MR. OLIVE: Thank you.

14 Okay. Jeff Johnson.

15 MR. JOHNSON: Thank you. For the record, my name's  
16 Jeff Johnson. I'm the organizing and research director of  
17 the Washington State Labor Council, AFL-CIO. Well, not  
18 surprisingly, I disagree with the majority of the comments  
19 made by the business community, although I can agree with  
20 Ray's comment on the typo.

21 MR. TUVEY: Way to go Ray.

22 MR. JOHNSON: I also want to, on behalf of labor, thank  
23 the employment security department, I mean the folks here,  
24 but also the folks we don't see here that I know worked over  
25 the last year developing ESD's input on these rules. A lot

1 of people put in a lot of time and effort for this. And you  
2 are always professional, always cordial and very inclusive.  
3 And it was not an easy task; I know that. So thank you.

4 But also as this whole processes proves to us, once  
5 again, indeed, you cannot make a silk purse out of a sow's  
6 ear. The underlying bill was ill-conceived. It was poorly  
7 written. It was not heard in the legislature. It was not  
8 read by most in the legislative process. And it has had  
9 devastating impact on many workers and their families in  
10 this state.

11 We continue to disagree with ESD on their  
12 interpretation of the laws in regards to WAC 192-110-200  
13 that has to do with maximum benefits. We read the law as a  
14 temporary trigger, a trigger mechanism that when the

15 unemployment rate falls below 6.8, you trigger on 26; when  
16 it goes back up, we trigger back to 30.

17 That's how we read the law. We continue to read it  
18 that way. We would love for you to change your mind on  
19 that. I don't think that's going to happen, but with for  
20 the record, that's what we think the law says.

21 But also we would like ESD to consider another WAC that  
22 in the emergency rules were removed, which was 192-12-184.  
23 And it regards commissioner-approved training and  
24 particularly the exemption around work search and being  
25 ready and available for work when you are in full-time

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1 training and when there's a bona fide job offer at the end  
2 of that training.

3       We have decisions that have come to my attention, and  
4 the impact of this law is slowly coming to the fore as time  
5 goes on. But we have decisions from ALJs now that are  
6 denying workers who quit a job to go into joint  
7 apprenticeship training with a job offer at the end of that  
8 training. They have been disqualified from receiving  
9 unemployment benefits because they are in  
10 commissioner-approved training and because that training  
11 prevents them from an active and so-called realistic job  
12 search.

13       It basically turns on its head what they tried to  
14 create in this system around being able to quit a job for  
15 bona fide job offers and for full-time commissioner-approved  
16 training. So if you've got workers who last year, as they  
17 had throughout history, received benefits during that  
18 training and now don't, it doesn't make any sense to us.

19 According to the ALJ, because of the removal of that WAC  
20 that was why he made that decision. So we would  
21 respectfully ask you to reconsider reinstating that WAC  
22 provision and bring a little bit more sanity back to job  
23 search when you are in training and you have a bona fide job  
24 offer that both the union and employer agree to.

25 That's really all I can offer at this point in time.

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1 We've given written testimony in the past, and I may follow  
2 this up in a couple days with a little bit more written  
3 testimony. But for now that will do. I apologize, I also  
4 have to leave, so thank you for giving me this time.

5 MR. OLINE: Thank you, Mr. Johnson.

6 MR. TUVEY: Jeff, what's the reference to the WACs for

7 the training?

8 MR. JOHNSON: 192-12-184.

9 MR. TUVEY: Thank you.

10 MR. OLINE: I don't see anybody who has asked to give  
11 testimony. Is there anybody else who would like to give  
12 testimony?

13 Back to Dan. That's right.

14 MR. SEXTON: Back to the start.

15 MR. OLINE: Sorry.

16 MR. SEXTON: Well, let's start with the simple ones.  
17 Clearly I agree with everything that Jeff Johnson just said.  
18 And I too will be following up with written testimony.

19 Let's jump around here a little bit if I may, because  
20 there was something that Ray said that I might agree with.  
21 And I want to, you know, jump on everything that I might  
22 agree with. WAC 192-150-140 on page 17 sounded to me like



23 the recommendation was to change "religion" to "religious."  
24 It certainly sounds a little broader to me. I wouldn't have  
25 a problem with that.

32

1 Sub(3)(a) where it says, "You are inconsistent or  
2 insincere in your objections," I think this should be  
3 stricken. There's plenty of other criteria here. I may be  
4 inconsistent in my beliefs, but I am sincere in my beliefs.  
5 And I don't think the two go together or are needed. And  
6 there's plenty other criteria here that we should go by.  
7 And (3)(c) at the end of that, "You knew of the  
8 objectionable aspects of the work at the time of hire, or  
9 you continued working under the objectionable conditions,"  
10 and I would add at the end of that "beyond a reasonable

11 period of time." And I think it's on page 16 that  
12 "reasonable period of time" is first introduced, and I think  
13 that's a very good idea and good language.

14 And I would like to see -- you know, I think of the  
15 language in, jumping back and forth here, in 192-150-130,  
16 Worksite safety, which is very important; and the next  
17 section, which is, Illegal activities at the worksite, you  
18 know, I would like to see the "reasonable period of time"  
19 language, just to simplify, clarify things. I don't know  
20 why we need different language in the two sections. I think  
21 we could probably simplify that and come up with something  
22 that would work well in both cases there.

23 And jumping to Dale's comments, I think I pretty much  
24 strongly disagreed with everything Dale had to say --

25 MR. TUVEY: With one exception.

1           MR. SEXTON: With one exception. Excuse me, you're  
2 right.

3           But I wrote comments on both the worksite safety and  
4 the illegal activities. I think these are two of the most  
5 important sections. And I really think that the department,  
6 the State, has to be careful here about putting employees in  
7 harm's way. And I think the language as it is written -- it  
8 could be better, but it's not too bad. And I would be very  
9 careful with that language. I don't think I would change  
10 it. I think, you know, the priority there has to be to  
11 safeguard the employee and not to put the employee in harm's  
12 way.

13           There was something that Norm said on page 18, and I  
14 didn't make a note of it, but I think I probably just

15 disagreed with what you had to say, Norm.

16       Let me see. There's some other thoughts I had here. I  
17 will try to get to them as briefly and concisely as I can,  
18 since those are not my strong suit.

19       WAC 192-140-090 for the "justifiable cause" language.  
20 I like the "justifiable cause" language, and I like  
21 "justifiable cause includes but is not limited to..." I  
22 think those are the only places I could find those words  
23 "but is not limited to." I think those words are probably  
24 more applicable in other places, and I think they would be  
25 useful in other places.

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1       I've got some -- let me see here. Here's a comment I

2 had about something Dale said on page 12. It's the  
3 exception to leaving work because of illness or disability:  
4 (b) "Immediate family" on page 12 "means your spouse,  
5 children, including unborn children, stepchildren, foster  
6 children, or parents of either spouse, whether living with  
7 you or not, and other relatives who temporarily or  
8 permanently reside in your household."

9 I think that's good language. I think that's -- you  
10 know, a lot of people may have temporary custody of children  
11 or custody may change, situations may change at a moment's  
12 notice. And I think this language is good language and  
13 should pretty well cover whatever may happen.

14 I think the -- one of the things I really liked was the  
15 "reasonably prudent person" definition as someone who's been  
16 advocating for a reason for a long time. I like the  
17 "reasonable person" definition. I like where it's been  
18 included, and I think it should be included more often.

19 I've made a few notes here, and I'll probably refer to  
20 those.

21 Another thing that jumped out at me, I think, was on  
22 page 23, 192-180-015, Tracking job search activities, (4):  
23 "How long should I keep my log? Keep your looking for at  
24 least 60 days after the end of your benefit year or 60 days  
25 after receiving your final payment on any extension

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1 benefits, whichever is later."

2 You know, that might be existing policy, but it seems  
3 like 60 days is excessive. It seems to me that 30 days  
4 should be plenty of time to keep a log laying around. And I  
5 don't see why it should be necessary to go back farther than

6 that.

7 I know there was a good point I had here somewhere. I  
8 may or may not find it. But on the next page, 24, WAC  
9 192-180-025, Job search review interviews, drop down to (3),  
10 I think I pretty much disagree with everything that  
11 everybody said about this section. On (a) I think it should  
12 read, "The interviewer will review the last week of your job  
13 search documentation."

14 You know, there's no reason to leave this open-ended  
15 and say "at least one week." That just opens it up to, you  
16 know, Well, why not more weeks? It should not be  
17 "arbitrarious" (sic). It should be set. It should be  
18 clear. You should know. The rules should be clear. And  
19 why don't we just say what we mean and just say we're going  
20 to review the last week?

21 I kind of thought we could add to this list because  
22 this is a set list. And, you know, I'm not really sure what

23 exactly "natural disasters or acts of nature" covers, but if  
24 that doesn't cover everything, I think I want to include  
25 some more things in there. Because clearly there could be

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1 situations beyond your control, you know, if you were in a  
2 car accident, if you were mugged, if you were in a coma that  
3 morning, whatever it might be that would be an act of nature  
4 or natural disaster. I don't know how exactly that is  
5 defined, but I think I would like to see a little more  
6 there.

7 Let me see. I've got a couple more notes here, but I  
8 don't know if they're too important for right now. You  
9 know, I think I pretty much disagreed with everything the



10 AWB said. There was a couple references there, you know.

11 I'm fine with, you know, changing "religion" to "religious."

12 And I think Jeff had some very good comments. I agree with  
13 what he said.

14 MR. OLIN: Okay. If nobody else is --

15 MS. LOGUE: I put down not to testify, but a couple  
16 things came up that I would like to address. Carolyn Logue  
17 with the National Federation of Independent Business.

18 First of all, we had plenty of opportunity to add our  
19 comments into what AWB has submitted, and we are in  
20 agreement with that document that we submitted.

21 Secondly, Norm brought up something that I hadn't  
22 noticed. And I think I remember some discussion about that  
23 "greatest number," and I think that was supposed to be  
24 "majority," if I recall from discussions from long ago.  
25 Because the clarification in the "majority" is significantly

1 different than the "greatest number."

2       And then Dale brought up a couple things that I think  
3 we would be concerned with too as small business, is the  
4 verification of substantiation in the worksite safety and  
5 illegal activity that there was actually some verification  
6 or substantiation that the employee can provide, and not  
7 just simply a statement of awareness, but that they actually  
8 had something of substantiation that this actually occurred.

9       And those would be my only comments, other than thank  
10 you very much. We appreciate the opportunity to have some  
11 last input in this.

12       MR. OLINE: Great. Anybody else?

13       MR. RAFFAELL: I just have an additional comment on

14 page 12 going back over to 11. I believe we're referring to  
15 whether you're a member of your immediate family. And I  
16 think when you go to (b) on page 12, it indicates, "Your  
17 immediate family means your spouse, children, stepchildren,  
18 foster children, or parents of either spouse," and that's  
19 the immediate family. And I think that you're adding an  
20 expansion here on what an "immediate family" is when you're  
21 adding "other relatives that temporarily or permanently  
22 reside in your household."

23 Those are not immediate family. That could be a fifth  
24 cousin that could be staying with you. I think that's an  
25 expansion of what immediate family is. In the past it could

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1 have been your children, stepchildren, or foster children or

2 parents of either spouse or your spouse. And I don't recall  
3 anything ever identifying any other relative. I think  
4 that's too much of an expansion. I'm not sure if the  
5 statute addresses that at all without having looked at RCW  
6 50.20.050 recently.

7 That's all I have.

8 MR. OLIVE: Okay. Any comments?

9 Dan.

10 MR. SEXTON: Of course I disagree with everything  
11 Carolyn had to say.

12 MS. LOGUE: Of course. He just has a shirt that says  
13 that.

14 MR. SEXTON: I have a rubber stamp. I just forgot to  
15 bring that.

16 On Norm's comments, I think this is pretty good  
17 language. And I don't think this is, you know, trying to

18 include, you know, your friends and your neighbors and the  
19 people down the street. You know, what about your  
20 grandparents? What about anybody who is dependent on your  
21 care? What about your aunt gets dropped off on your  
22 doorstep, and it's your job and your responsibility to take  
23 care of her? What are we going to do? Say, I don't care.  
24 It doesn't say "aunt" here, so, you know, she gets kicked to  
25 the curb? I think this language here is pretty good

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1 language. I could go farther with it, but I think this is  
2 good language, and we should leave it alone.

3 MS. MYERS: For purposes of clarification, this section  
4 is an amendatory section. That language "and other  
5 relatives who temporarily or permanently reside in your

6 household" is currently in the existing regulation, and it  
7 has not been added. There's no change. It would be  
8 underscored if I had added it.

9 MR. SEXTON: Okay.

10 MR. TUVEY: We still don't have to like it.

11 MS. MYERS: No. But it is there.

12 MR. TUVEY: I understand.

13 MR. SEXTON: So you mean it works.

14 MS. MYERS: Relatives other than those listed who  
15 aren't living with you, for example, if either your sister  
16 or your brother doesn't live with you, whether temporarily  
17 or not, they are not considered part of your immediate  
18 family.

19 MR. RAFFAELL: What happens if you have to go to their  
20 house to take care of them during the day and you can't  
21 work?

22 MS. MYERS: They're not residing in your household.  
23 MR. RAFFAELL: So that would not cover that.  
24 MS. MYERS: Correct.  
25 MS. LOGUE: So you have to move them in.

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1 MR. RAFFAELL: Okay.  
2 MR. OLIVE: Well, if there's no other comments, I would  
3 like to conclude this hearing.  
4 And this hearing was convened to consider testimony on  
5 the proposed proposal to the amended rules to clarify  
6 eligibility requirements for individuals with unemployment  
7 claimants effective prior to January 4, 2004, or January 4,  
8 2004, or later.  
9 All oral testimony presented at this hearing and

10 written submissions will become part of the official  
11 records.

12 Deadline for submitting written comments is next  
13 Wednesday, which I believe is July 21 at 5:00 p.m. Written  
14 comments should be addressed to Juanita Myers. Does  
15 everybody have her address?

16 MS. MYERS: You can have my card.

17 MR. OLINE: If you don't, you need to pick up a  
18 business card.

19 MR. SEXTON: 21?

20 MR. OLINE: The 21st, next Wednesday by 3:00 p.m.

21 Our final decision regarding adoption of this proposed  
22 rule-making will be made after testimony and written  
23 comments have been considered.

24 And does anybody wish to offer further testimony  
25 concerning the proposal rule-making before us today? I



1 guess we've asked that several times.

2       So on behalf of the commissioner, Dr. Sylvia P. Mundy,  
3 thank you for participating in this hearing. And this  
4 hearing is adjourned at 3:56, July 14, 2002. Thank you for  
5 attending.

6                               (Whereupon, at 3:56 p.m.,  
7                               the proceedings concluded.)  
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C E R T I F I C A T E

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4 STATE OF WASHINGTON )  
5 County of Kitsap ) ss.

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7 I, Marcie L. Johnson, a Certified Court Reporter in and  
8 for the State of Washington, do hereby certify:

9 That the foregoing transcript of proceedings was taken  
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11 direction; that the transcript is an accurate transcript of  
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my abilities for the conditions present at the time of the  
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13 That I am not a relative, employee, attorney or counsel  
14 of any party to this matter, and that I am not financially  
interested in said matter or the outcome thereof;

15 IN WITNESS WHEREOF, I have hereunto set my hand and  
16 affixed my official seal on this 14th day of August, 2004,  
at Port Orchard, Washington.

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resi di ng

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